

noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,

*Attorney General*

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4444.

CONCEALED WEAPON—RAILROAD POLICEMAN MAY CARRY CONCEALED WEAPONS WHEN.

*SYLLABUS:*

*A railroad policeman appointed pursuant to the provisions of Section 9150, General Code, and whose commission is recorded in the Secretary of State's office under the terms of Amended Senate Bill No. 153 (effective September 4, 1935), may carry concealed weapons if he first gives bond as required by Section 12819, General Code.*

COLUMBUS, OHIO, July 22, 1935.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“At the recent session of the General Assembly, Section 9151 of the General Code was amended so that it now provides that the commission of a policeman with the oath endorsed thereon shall be recorded in the office of the Secretary of State.

With reference to this requirement, we are in receipt of a letter which reads in part as follows:

‘The amendment appears to have been timely because it provides one central office, namely, the office of the Secretary of State for the filing of the commissions issued by the Governor in such behalf, and because the powers and liabilities of special officers so appointed are clearly outlined, which powers and liabilities are those of municipal policemen. Heretofore the statute provided that railroad policemen possessed the powers of police of cities.

Section 12819, G. C., makes it an offense to carry concealed weapons, but that section contains a proviso that the act “shall not affect the right of regularly appointed police officers of incorporated cities and villages to go armed when on duty”. Therefore, municipi-

pal policemen have the lawful power to go armed. Another proviso in the same section is to the effect that certain officers who perhaps serve casually and intermittently, may lawfully go armed if they first give a certain bond. Such officers are referred to as deputy sheriffs and specially appointed police officers. There are a host of specially appointed police officers in this state such as deputy sheriffs, police for agricultural fairs, for cemetery associations, for Chautauqua assemblies, for the state house, and for state institutions. Even a railroad conductor and ticket agent is a special policeman under section 9156.

It seems that the intention of the law is that all such shall give bond if they desire to go armed. Some of the special officers named above are designated in section 12819, and some are not.

Undoubtedly, railroad police are *regularly* appointed. Undoubtedly, they possess, and they may exercise, the powers of municipal policemen. Therefore, it would appear that they are not within the proviso applicable to deputy sheriffs and specially appointed police officers with respect to the giving of a bond. A railroad policeman is authorized to act as a policeman, not only upon the premises of the railroad, but elsewhere, in the discharge of his duties. (Section 9150). The Supreme Court has held that a railroad policeman is a public officer deriving his authority directly from the state. *Railroad vs. Fieback*, 87 Ohio State, 254.

I think you and I can agree that it is desirable to have uniformity in Ohio concerning whether a railroad policeman must give a statutory bond in order to qualify. May I suggest that advisability of your requesting an opinion from the Attorney General on this point?"

In accordance with the last paragraph of the letter just quoted, I will ask you to give this matter your official consideration, advising me of your conclusion at your earliest convenience."

Section 9150, General Code, provides for the appointment of special policemen for banks, building and loan associations and railroads by the Governor. Section 9151, General Code, at the present time reads as follows:

"Before entering upon the duties of his office, each policeman so appointed shall take and subscribe an oath of office, which shall be endorsed on his commission. A certified copy of such commission shall be issued by the governor upon the payment of a fee of fifty cents for each copy so furnished, and, with the oath shall be recorded in the office of the clerk of the common pleas court in the county in which such bank, building and loan association, or association of

banks or building and loan associations, is located and in each county through or into which the railroad runs for which such policeman is appointed, and intended to act. Policemen so appointed, and commissioned severally shall possess and exercise the powers, and be subject to the liabilities of policemen of cities in the several counties in which they are authorized to act while discharging the duties for which they are appointed.”

This section was amended by Amended Senate Bill No. 153 (effective September 4, 1935). As amended, Section 9151, General Code, will read as follows:

“Before entering upon the duties of his office, each policeman so appointed shall take and subscribe an oath of office, which shall be endorsed on his commission and said commission with the oath shall be recorded in the office of the secretary of state who shall charge and collect a fee of one dollar therefor. Policemen so appointed and commissioned severally shall possess and exercise the powers, and be subject to the liabilities of municipal policemen while discharging the duties for which they are appointed.”

While you do not so state I assume that your question is whether or not a railroad policeman appointed pursuant to the provisions of Section 9150, General Code, and whose commission is recorded in the Secretary of State's office, under the terms of Amended Senate Bill No. 153, may carry concealed weapons without first giving bond.

The right to carry a concealed weapon depends upon the provisions of Section 12819, General Code. This section was not repealed or amended at the recent session of the legislature at which time Amended Senate Bill No. 153 was passed. Section 12819, General Code, reads as follows:

“Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person shall be fined not to exceed five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or imprisoned in the penitentiary not less than one year nor more than three years. Provided, however, that this act (G. C. 12819) shall not affect the right of sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables and special officers as provided by sections 2833, 4273, 10070, 10108 and 12857 of the General Code to go armed when on duty. Provided further, that it shall be lawful for deputy sheriffs and specially appointed police officers, except as are appointed or called into service by virtue of the

authority of said sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed if they first give bond to the state of Ohio, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them; and any person injured by such improper use may have recourse on said bond."

The exact question raised by you was passed upon in an opinion to be found in the Annual Report of the Attorney General for 1913, Vol. II, page 1547. The syllabus of that opinion reads as follows:

"Railroad policemen do not have the right given to the particular officers designated in section 12819, General Code, in reference to carrying concealed weapons. Their right to carry concealed weapons is conditioned upon their giving bond, provided for in the second provision of this statute."

The following appears at page 1548:

"It is true that now, as before the amendment of section 12819, by virtue of the provisions of section 9151, General Code, railroad policemen possess and may exercise the powers of city policemen. In the consideration of the question here presented, however, it is to be borne in mind that section 12819 does not confer the absolute right to go armed on persons having powers of city policemen or on persons having any other particular powers or special duties to perform. This section does confer such absolute right on police officers of cities and villages and upon sheriffs, by name, and likewise confers this right upon other officers designated in the first provision in this statute, not including railroad policemen; while deputy sheriffs and all other specially appointed officers are provided for with respect to their right to go armed by the second proviso in the statute above noted, giving them such right upon condition that they execute the bond therein provided for. In this connection it may be questioned whether or not the provisions of section 9151, conferring upon railroad policemen the powers of policemen in cities, does not have reference to powers expressly granted to city policemen by other statutory provisions. (See section 4378 G. C.; section 1536-687; section 1934 R. S.; 72 O. S. 347, 354.) However, were it to be considered that section 9151 standing alone, would be effective to give railroad policemen an absolute right to go armed in the discharge of their duties in view of the fact that city policemen, by the provisions of

section 12819, are given such right, yet it appears that by this section special provision is made as to specially appointed police officers, including railroad policemen, making their right to go armed conditioned on their giving the bond prescribed.”

I agree with the conclusions reached in the above opinion and in the reasoning upon which it is based. Since Section 12819, General Code, which is in pari materia with Section 9151, General Code, has not been changed since the rendition of the above 1913 opinion, the only question remaining is whether or not the amendment of Section 9151, General Code, will change the conclusion reached in the 1913 opinion. The last sentence of Section 9151, General Code, supra, reads as follows:

“ \* \* \* Policemen so appointed, and commissioned severally shall possess and exercise the powers, and be subject to the liabilities of policemen of cities in the several counties in which they are authorized to act while discharging the duties for which they are appointed.”

The last sentence of Section 9151, General Code, as amended by Amended Senate Bill No. 153 (effective September 4, 1935) will read as follows:

“ \* \* \* Policemen so appointed and commissioned severally shall possess and exercise the powers, and be subject to the liabilities of municipal policemen while discharging the duties for which they are appointed.”

In the letter that you quote reference is made to the possibility that this amendment makes railroad policemen commissioned under the provisions of Section 9150, General Code, similar to regularly appointed police officers of cities, so that they may carry concealed weapons under the provisions of Section 12819, General Code, without first giving bond. As stated before, Section 12819, General Code has not been amended. This section is in pari materia with Section 9151, General Code. Had the legislature intended to permit such special policemen to carry concealed weapons without first giving bond it would have been an easy matter to have so stated in the amendment of Section 9151, General Code. Being later in time to Section 12819, General Code, as well as a special statute it would have been controlling as to this question. There is nothing in the amendment of Section 9151, General Code, which would affect Section 12819, General Code.

Repeals by implication are not favored and in the absence of a total inconsistency between two statutes it is the duty of the courts to harmonize

the statutes. There does not seem to be any inconsistency created as to these two statutes by the passage of Amended Senate Bill No. 153.

Without further extending this discussion it is my opinion in specific answer to your inquiry that a railroad policeman appointed pursuant to the provisions of Section 9150, General Code, and whose commission is recorded in the Secretary of State's office under the terms of Amended Senate Bill No. 153 (effective September 4, 1935), may carry concealed weapons if he first gives bond as required by Section 12819, General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General*

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4445.

BOARD OF EDUCATION—CONTRACT WITH COUNTY SUPERINTENDENT OF SCHOOLS DISCUSSED—(O. A. G. 1922, P. 430 OVERRULED).

*SYLLABUS:*

1. *A county superintendent of schools is a public officer, the salary for whom when fixed, may not be changed during his term.*

2. *The duty of a county board of education to fix the salary of its county superintendent of schools who has been duly appointed to the office, is expressly enjoined by statute, and until such salary is fixed and the proffered appointment accepted, the appointment is not complete and no contract exists between the parties.*

3. *Where a county board of education makes an appointment of a county superintendent of schools for a period of three years, and fixes the salary for said appointee for one year only, and reserves the right to fix the salary for the remaining years at some later date, the acceptance of the appointment so made constitutes a valid appointment for one year only. (Opinions of the Attorney General, 1922, p. 430 overruled.)*

COLUMBUS, OHIO, July 22, 1935.

HON. FLOYD A. COLLER, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The minutes of the Wood county board of education, of June 11, 1934, read in part, as follows: